IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 512 of 2007()

CC.1141/2000 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER: 1ST ACCUSED:

IMMANUEL JUSTINE, KOCHAPPILLY HOUSE,
MULAVUKAD P.O., BOLGATTY.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS: COMPLAINANT/ACCUSED:

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1. SREEVIDYA K.P., W/O.C. ASHOK,
C-75, INCOME TAX QUARTERS, PANAMPILLY NAGAR,
KOCHI-36.

2. M/S.AUTOMATES, COCHIN-18.

3. K.P. GEORGE, PARTNER AUTOMATES
RESIDING AT KURUPPANCHIRA LANE
ELAMAKKARA, ERNAKULAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.512 of 2007

Dated this the 13th day of March, 2007

ORDER

The petitioner is the managing partner of a firm which has been found guilty, convicted and sentenced as the 1st accused in a prosecution under Section 138 of the N.I Act. The petitioner has not been made an accused personally. He only represented the 1st accused as its Managing Partner. There was no allegation or finding that the petitioner had any personal culpable liability for the offence proved in the case. The signatory of the cheque, a partner was arrayed as the 2nd accused. He has been found guilty, convicted and sentenced also.

2. The petitioner has come to this Court with a short grievance that the learned Magistrate, illegally, incorrectly and improperly, is issuing non bailable warrant against the petitioner to arrest him for the alleged liability of the 1st accused. This is impermissible in law and the non bailable warrant issued against him deserves to be quashed, it is urged.

3. Report of the learned Magistrate was called for. The learned Magistrate submits that solely because of an error, non

bailable warrant of arrest happened to be issued against the petitioner, who only represents the firm. The learned Magistrate virtually accepts that the sentence against the 1st accused - a fine of Rs.50,000/- cannot be attempted to be recovered by any default sentence against the petitioner. In these circumstances, the prayer of the petitioner has only got to be accepted.

4. The report of the learned Magistrate seems to suggest that the partnership has been dissolved. Even if it has been dissolved, recovery must certainly be effected from the assets of the partnership in the hands of the individual partners. That the partnership has been conveniently dissolved subsequent to the proceedings is certainly no justification for the learned Magistrate to refrain from initiating steps for recovery of the fine amount from the partnership. Partnership in law is only a compendious expression to refer to the partners who transact business in such name of the firm. The partners shall continue to be liable for the fine amount which is liable to be recovered from the partnership. Of course, there can be no attempt to recover the fine amount from the partnership by imposing any default sentence on the partners as there is no such default sentence imposed against the 1st accused at all.

5. In the result, this Crl.M.C is allowed. It is directed that non bailable warrant cannot be issued against the petitioner who only represents the 1st accused. However, the learned Magistrate shall continue the attempt to recover the fine amount by issue of warrants under Section 421 Cr.P.C against the properties of the firm and from the assets of the partners if the partnership has by now been dissolved.

(R.BASANT, JUDGE)

rtr/-

R.BASANT, J

Crl.M.C.No.512 of 2007

Dated this the 27th day of February, 2007

ORDER

The petitioner is the Managing Partner of a partnership firm. That partnership firm was the 1st accused in a prosecution under Section 138 of the N.I Act. The petitioner had represented the said partnership firm in the said prosecution as its Managing partner. The petitioner was not an accused himself. Another partner was arrayed as the 2nd accused. Trial is complete. Both the accused have been found guilty, convicted and sentenced. The 1st accused firm has been sentenced to pay a

fine of Rs.50,000/-. The 2nd accused has been sentenced to pay fine of Rs.50,000/- and in default of payment of fine to undergo simple imprisonment for a period of one month.

2. The petitioner now submits that the learned Magistrate has unjustifiably issued a non bailable warrant against the petitioner. The petitioner is not an accused. He was only representing the 1st accused firm. The fine is to be recovered from the 1st accused firm as stipulated under Section 421 Cr.P.C. The petitioner submits that the learned Magistrate has incorrectly issued a non bailable warrant against the petitioner. The petitioner submits that there is absolutely no justification in the course followed by the learned Magistrate of issuing a non bailable warrant against the petitioner.

3. I have heard the learned counsel for the petitioner. I have perused the judgment rendered by the learned Magistrate in the prosecution. I am satisfied that a report must be called for from the learned Magistrate about the circumstances under which non bailable warrant has been issued against the petitioner, who was only representing the 1st accused firm as its Managing Partner in the prosecution launched against the partnership firm and another partner.

4. The report of the learned Magistrate must reach this Court by 12.03.2007. Call on 13.03.2007.

Crl.M.Appl.No.866 of 2007

The non bailable warrant issued against the petitioner shall not be executed till 13.03.2007.

(R.BASANT, JUDGE)

rtr/-